

# PORT OF HOUSTON AUTHORITY

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## VIA ELECTRONIC MAIL

July 29, 2011

Mr. Stephen Ellis, Project Manager  
Texas Commission on Environmental Quality  
Superfund/SSDAP Section, Remediation Division  
12100 Park 35 Circle  
Austin, Texas 78753  
stellis@tceq.state.tx.us

Mr. Stephen Tzhone, Remedial Project Manager  
U.S. Environmental Protection Agency, Region 6  
Superfund Division (6SF-RA)  
1445 Ross Avenue, Suite 1200  
Dallas, Texas 75202-2733  
Tzhone.stephen@epamail.epa.gov

Dear Mr. Ellis and Mr. Tzhone:

We appreciate the cooperative efforts the Texas Commission on Environmental Quality (TCEQ), U.S. Environmental Protection Agency (EPA) and other agencies are making to address dioxin issues in our operating area, and the Port of Houston Authority is committed to being a partner in this process. In that regard, we are requesting clarification on the Public Announcement from TCEQ, EPA, and the U.S. Army Corps of Engineers (USACE), dated October 21, 2009, regarding a Permit Evaluation Process and dredged sediment disposal options.

The conditions determination, as outlined in Section II.A.5 of the Public Announcement are:

1. If sample >1000 ppt TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill.

2. If sample >33 ppt TCDD organic carbon normalized and <1000 TEQ; or, >0.45 ppt TCDD non-organic carbon normalized and <1000 TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill or upland confined disposal area.
3. If sample <33 ppt TCDD organic carbon normalized; or, <0.45 ppt TCDD non-organic carbon normalized, then no restrictions on disposal location of sample's representative volume (or dredged materials).

It has recently come to our attention that the second and third conditions of the permit evaluation process above can conclude with conflicting results, especially in situations where sediments have low organic carbon contents. Consider the following real world example:

- TEQ concentration of 0.678 ppt
- TCDD concentration of 0.2 ppt (non-organic carbon normalized)
- Percent organic carbon 0.336%, fraction of organic carbon 0.00336

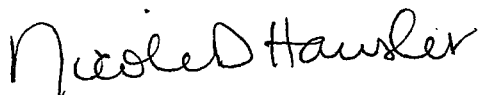
The calculated TCDD organic carbon normalized value for this sample is approximately 59.5 ppt.

Using the conditions provided in the guidance document, this sample would not pass Condition 2, because the organic carbon normalized concentration is higher than 33 ppt TCDD, and requires disposal in a hazardous waste landfill or upland confined disposal area. However, considering the "or" statement in Condition 3, there are no restrictions on the disposal location, because the sample is less than 0.45 ppt TCDD.

Even though the Permit Evaluation Requirement Process that is the subject of the October 21, 2009, public announcement does not include the entire operational area of the Port of Houston Authority, we are attempting to uniformly assess sediments that may be dredged within and outside the area identified in the announcement. With that in mind, we respectfully request clarification on what appears to be potentially conflicting conditions regarding sediment disposal options in the current public announcement.

We are currently evaluating sediment data for an upcoming dredging project and would appreciate your timely consideration to this matter. We look forward to receiving your response and working with you on these issues in the future.

Sincerely,



Nicole D. Hausler  
Senior Compliance Coordinator

Cc: Gary Miller, EPA (miller.garyg@epa.gov)

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# Public Announcement



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October 21, 2009

**U.S. ENVIRONMENTAL PROTECTION AGENCY, REGION 6  
U.S. ARMY CORPS OF ENGINEERS, GALVESTON DISTRICT  
TEXAS COMMISSION ON ENVIRONMENTAL QUALITY**

**INTRODUCTION:** Notice is hereby given of a Permit Evaluation Requirement Process (Process) effective as of **November 1, 2009** for all proposed and existing permits within the identified Area of Concern until further notice. The Area of Concern and Process is summarized in Attachment A.

**BACKGROUND:** On March 19, 2008, the EPA placed the San Jacinto River Waste Pits Superfund Site (Site) on the National Priorities List. This event marks the beginning of several steps that the EPA will be taking to clean up the Site thru the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) process. The Site is comprised of an area of land and an area of the San Jacinto River bottom, i.e., river sediment that is contaminated with certain hazardous materials from released waste paper mill sludge in an area where the Interstate Highway 10 Bridge crosses over the San Jacinto River.

Due to the Site being partially located in the San Jacinto River, area permitted activities, issued under Section 404 of the Clean Water Act (CWA) and Section 10 of the Rivers & Harbors Act of 1899 (RHA) may impact the Site. Those permitted activities that impact the Site may expose permittees to CERCLA liability. To minimize permittee exposure to CERCLA liability and to continue to effectively evaluate proposed and permitted activities, an interagency workgroup between U.S. Environmental Protection Agency (EPA), U.S. Army Corps of Engineers (USACE), and Texas Commission on Environmental Quality (TCEQ) developed a Process, which all permit applicants and existing permittees within the area of concern must undertake.

In summary, as part of the Process, all permit applicants and existing permittees within the area of concern must conduct certain sampling events to ensure that any activities conducted, especially activities involving dredging or disposal of dredged materials, do not impact Site investigation and cleanup.

The verification of such sampling events and adherence to the Process will be completed by TCEQ. The issuance of permits for work and/or activities regulated under Section 10 of the RHA and/or Section 404 of the CWA, with any associated special conditions (if necessary), will be completed by USACE.

Questions concerning the Process should be addressed to: Mr. Stephen Ellis, Project Manager, Superfund/SSDAP Section, Remediation Division, Texas Commission on Environmental Quality, 12100 Park 35 Circle, Austin, TX 78753, phone: (512) 239-5337, email: [stellis@tceq.state.tx.us](mailto:stellis@tceq.state.tx.us)

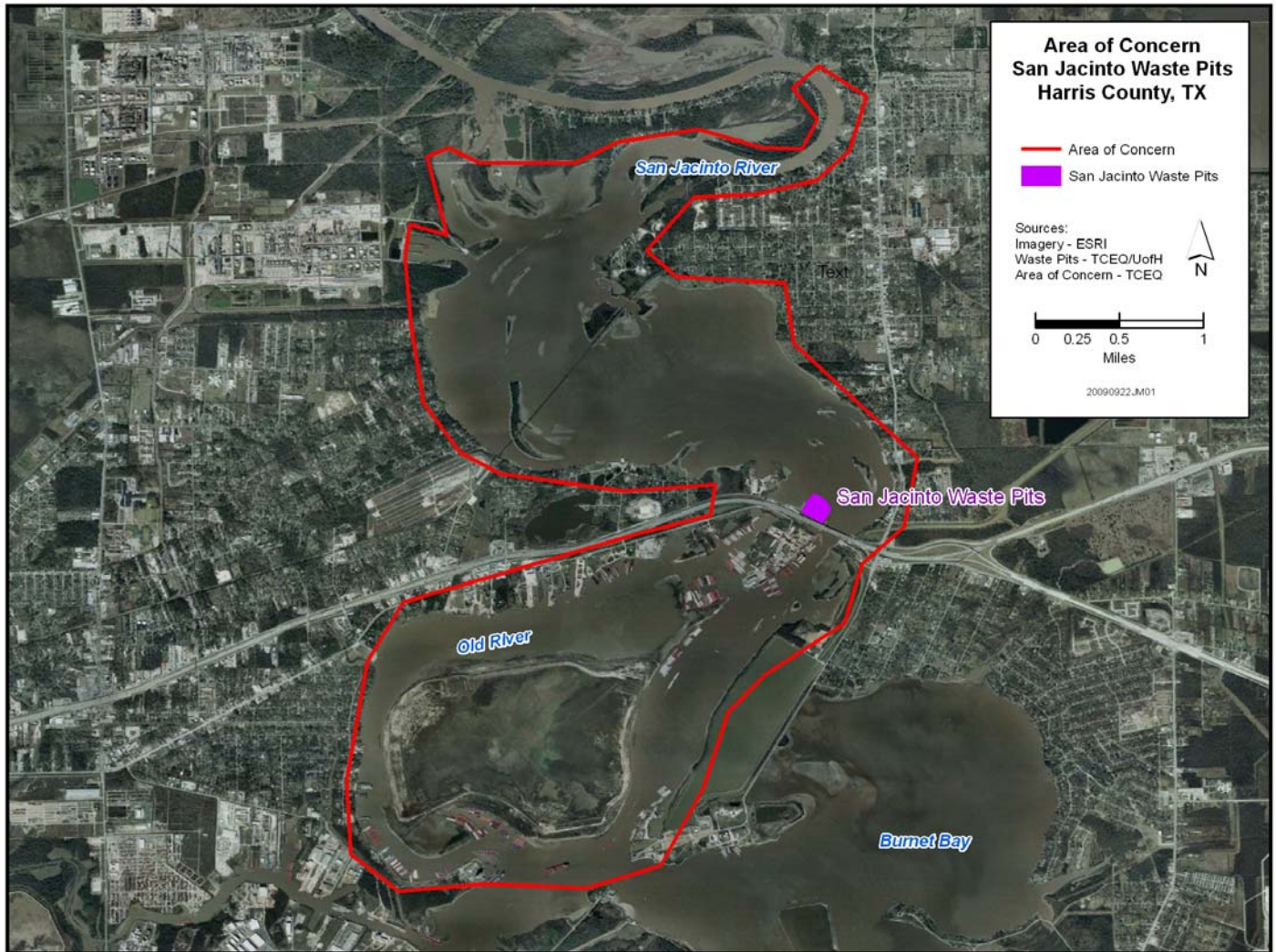
Questions concerning the permits issuance should be addressed to: Ms. Felicity Dodson, Project Manager, U.S. Army Corps of Engineers, Galveston District, 2000 Fort Point Road, Galveston, TX 77550, phone: (409) 766-3105, email: [felicity.a.dodson@usace.army.mil](mailto:felicity.a.dodson@usace.army.mil)

Questions concerning the National Priorities List, the Site, or steps involved in a Superfund site cleanup should be addressed to: Mr. Donn Walters, Regional Community Relations Liaison, U.S. Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202, phone: (214) 665-6483, email: [walters.donn@epa.gov](mailto:walters.donn@epa.gov)

Questions concerning CERCLA liability should be addressed to: Ms. Barbara Nann, Assistant Regional Counsel, U.S. Environmental Protection Agency, 1445 Ross Ave, Dallas, TX 75202, phone: (214) 665-2157, email: [nann.barbara@epa.gov](mailto:nann.barbara@epa.gov)

## PERMIT PRE-CONDITIONS AND CONDITIONS PROCESS

### I. AREA OF CONCERN DESCRIPTION



**Horizontal Datum Name: NAD 83**

**Ellipsoid Name: GRS 80**

**SOUTH of:**

longitude -95.063977 latitude 29.833028

(line perpendicular to river channel from approximately 20400 Rio Villa Drive)

**NORTH of:**

longitude -95.086488 latitude 29.761463

(line of sight bearing from DeZavalla Point to south terminal of Lynchburg Ferry, then along ferry route to north terminal).

## **II. PRE-CONDITIONS AND CONDITIONS PROCESS**

### **II.A. PERMIT PRE-CONDITIONS PROCESS**

TCEQ shall verify the fulfillment of the pre-conditions process (sections II.A.1. to II.A.4.) and certify to USACE the resulting conditions to be integrated into the permit (section II.A.5.).

#### **II.A.1. Required Sampling Procedures**

- SOP 1.4- Management of IDW
- SOP 1.5- Decontamination
- SOP 6.1- Documentation
- SOP 6.2- Homogenization of Soil Samples
- SOP 6.4- Sample Handling and Control
- SOP 8.1- Surface Water Sampling Using the Direct Method
- SOP 9.1- Sediment Sampling
- SOP 17.1-GPS Data Collection and Submission

#### **II.A.2. Required State of Texas Lab Certification**

- NELAC standard and accreditation process:  
<http://www.nelac-institute.org/docs/2003nelacstandard.pdf>
- Current list of accredited labs:  
[http://www.tceq.state.tx.us/assets/public/compliance/compliance\\_support/qa/txnelap\\_lab\\_list.pdf](http://www.tceq.state.tx.us/assets/public/compliance/compliance_support/qa/txnelap_lab_list.pdf)

#### **II.A.3. Required Sample Number & Distribution**

II.A.3.1. Sample Number: A minimum of two samples (one vertical composite sample and one post-dredged surface sample) shall be submitted per 5,000 cubic yards of total planned dredged volume (including any planned overdredges or advanced maintenance).

- Post-dredged surface sample (ie- representing the sediment to be exposed by the dredging) equates to one discrete sample that represents the 6” section immediately below the planned dredged depth in the same location(s) as determined in section II.A.3.2.

II.A.3.2. Sample Distribution: Samples identified in section II.A.3.1. shall be distributed evenly across the total planned dredged area.

#### **II.A.4. Required Sample Analysis**

- Laboratory sample analysis shall be via EPA 1613, EPA 8280b, or EPA 8290a.
- Laboratory results shall be reported as TEQ and TCDD organic carbon normalized or TCDD non-organic carbon normalized.
- Laboratory shall use WHO 2005 TEF to calculate TEQ.

#### II.A.5. Conditions Determination

- If sample >1000 ppt TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill.
- If sample >33 ppt TCDD organic carbon normalized and <1000 TEQ; or, >0.45 ppt TCDD non-organic carbon normalized and <1000 TEQ, then disposal of sample's representative volume (or dredged materials) shall be in a hazardous waste landfill or upland confined disposal area.
- If sample <33 ppt TCDD organic carbon normalized; or, <0.45 ppt TCDD non-organic carbon normalized, then no restrictions on disposal location of sample's representative volume (or dredged materials).

#### II.B. PERMIT CONDITIONS PROCESS:

After the TCEQ's evaluation of Section II.A. is submitted to the USACE Galveston District, the USACE will review the information and will add special conditions to Department of the Army permits when such conditions are necessary to satisfy legal requirements under the Clean Water Act and Rivers and Harbors Act of 1899 to otherwise satisfy the public interest requirement. The USACE will only be responsible for enforcing those conditions that are specifically tied to Section 404 of the Clean Water Act and Section 10 of the Rivers and Harbors Act of 1899.

In addition, the permit shall contain the following language:

"By accepting this permit, the permittee agrees to accept potential liability for both response costs and natural resource damages, to the same extent as would be inherent under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) as amended (42 U.S.C. 9601 et. Seq.). Further, the permittee agrees that this permit does not exclude the permittee from liability under the CERCLA, nor does the permit waive any liability for response costs, damages, and any other costs that may be assessed under the CERCLA."